



November 2004

## H.R. 218 Law Enforcement Officers Safety Act of 2004

On July 22, President Bush signed into law H.R. 218, titled “the Law Enforcement Officers Safety Act of 2004.” This legislation allows off-duty and retired officers to carry concealed weapons throughout the country.

In order to become exempt from state or local laws that would otherwise restrict carrying concealed weapons, the Act lays out criteria that must be met by active and retired law enforcement officers. These individuals must be either a “qualified law enforcement officer” or a “qualified retired law enforcement officer,” as defined by the Act. Also, they must carry official identification, which is specified in the Act.

### Qualified Active and Retired Officers:

Specific criteria are laid out to establish who may be a “qualified law enforcement officer” and who may be a “qualified retired law enforcement officer.” For instance, among the criteria for exemption of active law enforcement officers is the provision that they are not the current subjects of disciplinary action. Also, the Act requires that active officers must have met the employer’s standards for firearm qualification.

Criteria for qualified retired law enforcement officers include a provision that the retirement occurred in “good standing.” Retired officers must have held law enforcement employment for an aggregate minimum of 15 years or have retired due to a service-connected injury. The Act specifies that qualified retired officers must also meet the State’s standards for training and qualification of active law enforcement officers. *There is no provision permitting the application of local agency standards to establish status as a “quali-*

*fied retired law enforcement officer.”*

### Identification and Certification:

Active officers carrying firearms pursuant to this Act must also have in their possession photographic identification issued by the governmental agency for which the individual is employed as a law enforcement officer. Retired officers must possess official identification as well. Identification for retired officers must be issued by the agency from which the individual retired. It must be accompanied by certification, by the agency or the State of the retiree’s residence, that the individual has, within the past year, met either the agency’s or the State’s firearm standards for training and qualification of active law enforcement officers. This provision appears to be in conflict with criteria set forth to establish qualified retired law enforcement officer status, which does not permit use of any other benchmark for firearm qualification than the State’s standard for training and qualification of active law enforcement officers.

**Issues:** Absent a state standard for the

training and qualification of active law enforcement officers, it would appear that the provisions of H.R. 218 relating to retired officers cannot be implemented. MCOLES and many of our counterpart agencies in other states have not identified a single firearm assessment for qualification of active law enforcement officers. Indeed, many Michigan agencies use the MCOLES entry-level standard, which academy trainees must meet to successfully complete recruit training, yet others find different courses of fire more appropriate to meet agency training and qualification needs for active officers.

Given that Michigan currently does not have an in-service training standard for firearm qualification of incumbent law enforcement officers, MCOLES faces several challenges. Can a single standard serve the interests of both active and retired law enforcement officers? What liability issues for the officers, active or retired, and for the State, accompany this type of program?

What type of training standard could  
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## Public Safety Officer Benefit Payments Approved

At its October 27 meeting, the Commission approved the first four applications for benefits provided under the recently enacted Public Safety Officer Benefits Act (Public Act 46 of 2004). This program was created to provide a benefit to the survivors of Michigan public safety personnel who die or are permanently and totally disabled in the line of duty. The Act provides for a one-time benefit of \$25,000 to eligible survivor(s).

MCOLES was designated to administer the program at the time of its enactment, October 1, 2004. Thus far, nine applications for benefits have been received. These claims are related to the line of duty deaths of seven law enforcement officers, one firefighter, and one corrections officer. In some instances, the complexity of the claims has exceeded initial expectations, however the remaining applications are being processed without undue delay.

### A Message from the Executive Director. . .



My comments in our last newsletter began by acknowledging the line of duty deaths of three officers. Again, I open recognizing the tragic deaths of yet three more Michigan law enforcement officers. Officer Gary Davis, of the Bloomfield Township Police Department, lost his life last May 13 in a traffic crash that occurred while he was transporting a prisoner. On June 5th, Sterling Heights Officer Mark Sawyers was fatally wounded by gunfire during an ambush. Most recently, Deputy John Gunsell, of the Otsego County Sheriff Office, suffered fatal injuries in a September 12 traffic crash, which occurred while he was responding to another accident scene. The Commission has passed resolutions in honor of these fallen heroes, and we continue to remember their families and friends in our prayers.

Last April 29, the Commission took historic action to correct a long-standing legal problem concerning the

license status of officers working for agencies that offer law enforcement service yet lack statutory law enforcement authority. The Commission specified that it would no longer recognize such employment, for purposes of licensing (certification) effective September 15, 2004. Subsequent to the Commission's action, the Michigan legislature passed the Public Law Enforcement Agency Act, which was recently signed into law by the Governor. This legislation provides legal authority for many of the affected agencies. As of this writing, only isolated issues remain, and I am confident they will be resolved soon.

Last summer, Commission staff conducted three competitive grant workshops to prepare applicants for the 2005 cycle of the Justice Training Fund. A total of 62 grant applications were received as of the August 6 deadline. Of that amount, 11 were eliminated due to ineligibility or incomplete information. The remaining 51 applications represent \$4.3 million in

requested funding with \$3.2 million available for grant awards. The Commission will make its final determinations on competitive grant awards at its December 15 meeting in Lansing.

At its October 27, 2004, meeting, the Commission voted to establish the exit score for academy fitness training. Candidates will now be required to demonstrate improved fitness at the conclusion of the program. Also, the Commission reviewed proposed rules regarding implementation of the Public Safety Officer Benefits Act.

One last note of interest: as of October 21, 2004, Michigan's 610 law enforcement agencies reported employing 21,562 officers. 562 of those officers reported employment at more than one law enforcement agency. Of the total population of officers, 2,895 are female. These numbers represent a slight decline in the total number of active law enforcement officers statewide.

### The Michigan Commission on Law Enforcement Standards

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*Executive Director*

## Violations of Public Trust

During the recent political season, we were reminded frequently how often honesty takes a back seat to winning. Unsavory political advertisements containing half truths are big business. Indeed, dishonesty is often expected not only in politics, but in business, sports and many walks of life, when winning is at stake. So, what are we witnessing?

An article in Public Safety News has suggested there is a growing tolerance for certain forms of private and public dishonesty, especially when pressure and competition are involved. Recent surveys of high school students have revealed admissions of cheating at least once on an exam during the previous year's time among 74% of the survey respondents. Given the same survey in 1992, only 61% reported cheating. In interviews, students suggested it was necessary to cheat in order to compete with others who are cheating. Likewise, in the business world, major corporate executives caught in unethical or criminal conduct have sought to side step accountability by consigning responsibility to the necessity of "winning the game." In the world of sports, disciplinary action is now commonplace among professional athletes who have lied regarding their use of prohibited performance-enhancing drugs to improve their ability to compete.

If we are not witnessing a trend, we certainly are uncovering dishonesty more often. The evidence suggests that both are true. Indeed, lying has even become problematic in the world of faith. Recently, scandals have rocked several large church bodies. In each case, there were damaging revelations of dishonesty perpetrated to cover up the original problem.

In light of this, we should not be surprised to discover dishonesty among law enforcement officers. Recent research of 3.8 million civilian background investigations disclosed that 52% of the applicants lied on their resumes. There is no reason to believe that law enforcement would be spared from this trend, yet nothing will destroy a law enforcement career more quickly than confirmed dishonesty. A law enforcement officer caught in lies will most certainly be compromised as a witness in future court testimony.

Background investigations can provide significant help in identifying dishonest individuals before they enter law enforcement service. Unfortunately, many law enforcement agencies do not conduct thorough background investigations before hiring a candidate. The economics of this seem painfully clear - pay now or pay later. Yet many agencies cite economics as the reason they forego more extensive background investigations of law enforcement candidates. *(Continued on Page 4)*

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be used to limit liability exposure?  
For the individual? For the State?

We have received many inquiries from law enforcement leaders, active law enforcement personnel, and retired officers requesting clarification of the intent of this legislation. Moreover, we have received requests from retired officers asking us to expedite implementation of this Act. In that any Commission action relative to this matter holds potential for impact on every Michigan law enforcement agency as well as all active and retired Michigan law enforcement officers, the Commission has resolved to study its options closely. We note that many of our counterpart agencies across the country are taking a cautious approach.

the conflicting language in H.R. 218. To the extent that State law may facilitate resolution, the Commission will consult with the legislature. Finally, the Commission plans to convene a committee of subject matter experts to examine firearms standard options and alternatives that might be employed pursuant to this legislation.



The Commission has sought counsel from the Attorney General to clarify

#### REMINDER:

The Law Enforcement Distribution (LED) Registration will be completed through the MCOLES Information and Tracking Network for 2005.

#### **THERE WILL BE NO LED WORKSHOPS.**

If you have any questions, please call (517) 322-5615.

## Violations of Public Trust

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Regardless, after the misdeed occurs, the public may expect removal of law enforcement officers that, by way of dishonesty, are thought to have breached public trust. When an officer commits a crime, there is a general expectation by the public that the officer will not be allowed further participation in the law enforcement profession. This is particularly true in cases where there is a criminal conviction for behavior involving moral turpitude, or wanton and willful behavior. In a significant number of cases, the officer is charged with a felony, but for a variety of reasons is convicted of a misdemeanor, and therefore may retain his or her license, employment and/or eligibility.

Under the MCOLES employment standards, law enforcement officer candidates are screened by the employer for a history of behavior incompatible with public trust and service as a law enforcement officer. Every effort is made to keep such applicants out of the profession; yet by contrast, behavior that may exclude a new candidate from law enforcement employment does not automatically result in removal of licensure for an incumbent officer. This is most often seen in instances of misdemeanor convictions.

MCOLES is frequently reminded of its different methodologies in handling ethical dilemmas involving officer candidates versus incumbent police officers. In the interest of fairness and consistent, defensible policy with regard to both groups, we have begun to discuss these matters before various law enforcement leadership groups. Our goal is to capture the benefit of local experience, current thought, best practices and new ideas. To this end, your written thoughts and comments would be welcome.

## MCOLES Roster Questions and Answers

**One or more of my department's officers does not appear on the MCOLES Network roster. Why is this and what should we do?**

The most common reasons for this is that there is a lack of required documentation in MCOLES files to establish the officer was properly screened and/or hired by the agency. Following are the most prevalent reasons:

Grandfather situation - Officers eligible for licensing under a grandfather situation must have been fully empowered and employed prior to January 1, 1977. They

must be able to demonstrate, through supporting documentation, continuous employment. Officers having a break in service of more than two years would be required to attend the Recognition of Prior Training and Experience program (Waiver of Training).

Activation Not Properly Reported to MCOLES - Officers hired after January 1, 1977 are required to be properly trained and meet all the employment standards established at the time of hire. The most common problems in this situation are failure to provide notice of employment to MCOLES and inadequate documentation regarding medical screening.

Employment History Gaps - When officer changes in law enforcement employment are not reported to MCOLES, the MCOLES Network may lapse the officer's license absent a report of new employment.

**If officers are not shown on your roster, please investigate to see if any of the above situations may be the cause of this and fax the supporting documentation to MCOLES at (517) 322-5611 to the attention of Danny Rosa or contact him at (517) 322-6449 to resolve the issues.**

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